IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 112 of 1997

For Approval and Signature: sd/-

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMAD YUNUS ABBA BANSATHIA

Versus

PUSHPABEN W/O UDDHARAM KHUBCHAND

Appearance:

1. Appeal from Order No. 112 of 1997
   MR AMAR D MITHANI for Petitioner No. 1
   MR YOGESH S LAKHANI for Respondent No. 1
2. Appeal from Order No. 113 of 1997
   MR AMAR D MITHANI for Petitioner No. 1
   MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 18/10/2001

ORAL JUDGEMENT

1. Against the impugned order dated 1.3.1997,

dismissing the application Ex.5 in Special Civil Suit No.140 of 1996 passed by the learned Civil Judge (SD), Veraval, the present Appeal is filed. After issuing notice in this matter and hearing the other side the learned Single Judge of this Court admitted the Appeal way back on 23.7.1997 and expedited the hearing of the same. However, due to somehow or the other reasons the hearing could not take place till today. Along with this Appeal Civil Application No.3027 of 1997 was filed. while issuing the notice to the other side the possession of the appellant in respect of the corner shop admeasuring 20 x 10 ft. was protected. Later on the interim order was confirmed on 23.7.1997 and Rule was made absolute and the interim order granted earlier was ordered to continue till the final disposal of the Appeal. Thus, the interim order of status-quo regarding the possession of the shop in question is in operation till today.

2. If the Appeal had come up for hearing immediately after its admission in 1997 perhaps this court would have gone into the legality and validity of the impugned order passed by the trial Court, but for somehow or the other reasons it could not be heard for the period of 4 years.

3. Under the circumstances the learned Counsel for the parties agreed that this Appeal can be disposed of without going into the legality and validity of the impugned order passed by the learned trial Judge with a direction to the learned trial Judge to decide the main Special Civil Suit No.140 of 1996 as early as possible and till then the protection of the appellant plaintiff regarding the shop in question be protected.

4. Accordingly this Appeal is disposed of without going into the legality and validity of the impugned order passed by the trial Court with a direction to the learned trial Judge to decide the Special Civil Suit No.140 of 1996 as early as possible and not later than 31st December 2002. Till then the possession of the shop in question of the appellant - plaintiff shall not be disturbed on condition that the appellant shall not induct any other person in his place and he shall not transfer or alienate the property in question to any one else till the final disposal of the Suit. The parties shall fully cooperate with the hearing of the Suit.

sd/-

Date : October 18, 2001 (B.J.Shethna, J.)

sas